

Kristina M. Dixon, MBA, President

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7
8 **BEFORE THE**
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **KIRK ROBERT ALLEN, DPM**

Case No. 1B-2012-224310

12 **1011 Cass Street**
13 **Monterey, CA 93940**

14 **Doctor of Podiatric Medicine License**
15 **No. E1923**

STIPULATED SURRENDER OF
LICENSE AND ORDER

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Jason S. Campbell, J.D. ("Complainant") is the Executive Officer of the Board of
22 Podiatric Medicine. He brought this action solely in his official capacity and is represented in this
23 matter by Kamala D. Harris, Attorney General of the State of California, by Ashley Harlan,
24 Deputy Attorney General.

25 2. Kirk Robert Allen, DPM ("Respondent") is represented in this proceeding by attorney
26 Paul Chan, whose address is

27 Capitol Law Offices
28 2311 Capitol Avenue
Sacramento, CA 95816.

1 3. On or about December 22, 1975, the Board of Podiatric Medicine issued Doctor of
2 Podiatric Medicine License No. E1923 to Respondent. The Doctor of Podiatric Medicine License
3 was in full force and effect at all times relevant to the charges brought in Accusation No. 1B-
4 2012-224310 and will expire on July 31, 2016, unless renewed.

5 JURISDICTION

6 4. Accusation No. 1B-2012-224310 was filed before the Board of Podiatric Medicine
7 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The
8 Accusation and all other statutorily required documents were properly served on Respondent on
9 September 19, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.
10 A copy of Accusation No. 1B-2012-224310 is attached as Exhibit A and incorporated by
11 reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 1B-2012-224310. Respondent also has carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
16 and Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.
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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 1B-2012-224310, agrees that cause exists for discipline and hereby surrenders his Doctor of
4 Podiatric Medicine License No. E1923 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation he enables the Board to issue
6 an order accepting the surrender of his Doctor of Podiatric Medicine License without further
7 process.

8 CONTINGENCY

9 10. This stipulation shall be subject to approval by the Board of Podiatric Medicine.
10 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
11 Podiatric Medicine may communicate directly with the Board regarding this stipulation and
12 surrender, without notice to or participation by Respondent or his counsel. By signing the
13 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
14 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
15 to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary
16 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
17 action between the parties, and the Board shall not be disqualified from further action by having
18 considered this matter.

19 11. The parties understand and agree that Portable Document Format ("PDF") and
20 facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile
21 signatures thereto, shall have the same force and effect as the originals.

22 12. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the Board may, without further notice or formal proceeding, issue and enter the following Order:

24 ORDER

25 IT IS HEREBY ORDERED that Doctor of Podiatric Medicine License No. E1923, issued
26 to Respondent Kirk Robert Allen, DPM, is surrendered and accepted by the Board of Podiatric
27 Medicine.
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1 1. The surrender of Respondent's Doctor of Podiatric Medicine License and the
2 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
3 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
4 of Respondent's license history with the Board of Podiatric Medicine.

5 2. Respondent shall lose all rights and privileges as a Doctor of Podiatric Medicine in
6 California as of the effective date of the Board's Decision and Order.


7 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
8 issued, his wall certificate on or before the effective date of the Decision and Order.

9 4. If Respondent ever files an application for licensure or a petition for reinstatement in
10 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
11 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
12 effect at the time the petition is filed, and all of the charges and allegations contained in
13 Accusation No. 1B-2012-224310 shall be deemed to be true, correct and admitted by Respondent
14 when the Board determines whether to grant or deny the petition.

15 5. If Respondent should ever apply or reapply for a new license or certification, or
16 petition for reinstatement of a license, by any other health care licensing agency in the State of
17 California, all of the charges and allegations contained in Accusation No. 1B-2012-224310 shall
18 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
19 Issues or any other proceeding seeking to deny or restrict licensure.

1 ACCEPTANCE

2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney, Paul Chan. I understand the stipulation and the effect it will have
4 on my Doctor of Podiatric Medicine License. I enter into this Stipulated Surrender of License
5 and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
6 Order of the Board of Podiatric Medicine.

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8
9 DATED: 2/20/15 

10 KIRK ROBERT ALLEN, DPM
11 Respondent

12 I have read and fully discussed with Respondent Kirk Robert Allen, DPM the terms and
13 conditions and other matters contained in this Stipulated Surrender of License and Order. I
14 approve its form and content.

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17 DATED: 2/23/15 

18 PAUL CHAN
19 Attorney for Respondent
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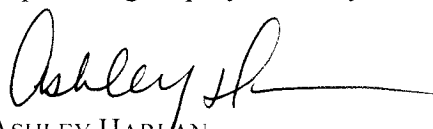
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the California Board of Podiatric Medicine of the Department of Consumer Affairs.

Dated: *February 24, 2015*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General


ASHLEY HARLAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1B-2012-224310

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 19, 2014
BY Tan K. McGlone ANALYST

7
8 **BEFORE THE**
9 **BOARD OF PODIATRIC MEDICINE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

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14 **1011 Cass Street**
15 **Monterey, CA 93940**

16 **Doctor of Podiatric Medicine License**
17 **No. E1923**

Case No. 1B-2012-224310

ACCUSATION

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Jason S. Campbell, J.D. ("Complainant") brings this Accusation solely in his official
21 capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer
22 Affairs.

23 2. On or about December 22, 1975, the Board of Podiatric Medicine issued Doctor of
24 Podiatric Medicine License Number E1923 to Kirk Robert Allen, DPM ("Respondent"). The
25 Doctor of Podiatric Medicine License was in full force and effect at all times relevant to the
26 charges brought herein and will expire on July 31, 2016, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Podiatric Medicine ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2222 of the Code states the California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.

The California Board of Podiatric Medicine may order the denial of an application or issue a certificate subject to conditions as set forth in Section 2221, or order the revocation, suspension, or other restriction of, or the modification of that penalty, and the reinstatement of any certificate of a doctor of podiatric medicine within its authority as granted by this chapter and in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code. For these purposes, the California Board of Podiatric Medicine shall exercise the powers granted and be governed by the procedures set forth in this chapter.

5. Section 2497 of the Code states:

"(a) The board may order the denial of an application for, or the suspension of, or the revocation of, or the imposition of probationary conditions upon, a certificate to practice podiatric medicine for any of the causes set forth in Article 12 (commencing with Section 2220) in accordance with Section 2222.

"(b) The board may hear all matters, including but not limited to, any contested case or may assign any such matters to an administrative law judge. The proceedings shall be held in accordance with Section 2230. If a contested case is heard by the board itself, the administrative

1 law judge who presided at the hearing shall be present during the board's consideration of the case
2 and shall assist and advise the board."

3 6. Section 2410 of the Code states a medical or podiatry corporation shall not do or fail
4 to do any act the doing of which or the failure to do which would constitute unprofessional
5 conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice,
6 it shall observe and be bound by such statutes and regulations to the same extent as a licensee
7 under this chapter.

8 7. Section 2234.5 of the Code states, in pertinent part:

9 "The board shall take action against any licensee who is charged with unprofessional
10 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
11 limited to, the following:

12 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
13 violation of, or conspiring to violate any provision of this chapter. ..."

14 8. Section 2239 of the Code states, in pertinent part:

15 "(a) The use or prescribing for or administering to himself or herself, of any controlled
16 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
17 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
18 any other person or to the public, or to the extent that such use impairs the ability of the licensee
19 to practice medicine safely or more than one misdemeanor or any felony involving the use,
20 consumption, or self-administration of any of the substances referred to in this section, or any
21 combination thereof, constitutes unprofessional conduct. The record of the conviction is
22 conclusive evidence of such unprofessional conduct.

23 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
24 deemed to be a conviction within the meaning of this section. The Division of Medical Quality
25 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
26 may order the denial of the license when the time for appeal has elapsed or the judgment of
27 conviction has been affirmed on appeal or when an order granting probation is made suspending
28 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4

1 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
2 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
3 information, or indictment."

4 COST RECOVERY

5 9. Section 2497.5 of the Code states:

6 "(a) The board may request the administrative law judge, under his or her proposed
7 decision in resolution of a disciplinary proceeding before the board, to direct any licensee found
8 guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable
9 costs of the investigation and prosecution of the case.

10 "(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
11 any event be increased by the board. When the board does not adopt a proposed decision and
12 remands the case to an administrative law judge, the administrative law judge shall not increase
13 the amount of any costs assessed in the proposed decision.

14 "(c) When the payment directed in the board's order for payment of costs is not made by the
15 licensee, the board may enforce the order for payment by bringing an action in any appropriate
16 court. This right of enforcement shall be in addition to any other rights the board may have as to
17 any licensee directed to pay costs.

18 "(d) In any judicial action for the recovery of costs, proof of the board's decision shall be
19 conclusive proof of the validity of the order of payment and the terms for payment.

20 "(e)(1) Except as provided in paragraph (2), the board shall not renew or
21 reinstate the license of any licensee who has failed to pay all of the costs ordered
22 under this section.

23 "(2) Notwithstanding paragraph (1), the board may, in its discretion,
24 conditionally renew or reinstate for a maximum of one year the license of any licensee
25 who demonstrates financial hardship and who enters into a formal agreement with the
26 board to reimburse the board within one year period for those unpaid costs.

1 "(f) All costs recovered under this section shall be deposited in the Podiatry Fund as a
2 reimbursement in either the fiscal year in which the costs are actually recovered or the previous
3 fiscal year, as the board may direct."

4 10. Section 2227 of the Code states:

5 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
6 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
7 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
8 action with the board, may, in accordance with the provisions of this chapter:

9 "(1) Have his or her license revoked upon order of the board.

10 "(2) Have his or her right to practice suspended for a period not to exceed one year upon
11 order of the board.

12 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
13 order of the board.

14 "(4) Be publicly reprimanded by the board. The public reprimand may include a
15 requirement that the licensee complete relevant educational courses approved by the board.

16 "(5) Have any other action taken in relation to discipline as part of an order of probation, as
17 the board or an administrative law judge may deem proper.

18 "(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
19 review or advisory conferences, professional competency examinations, continuing education
20 activities, and cost reimbursement associated therewith that are agreed to with the board and
21 successfully completed by the licensee, or other matters made confidential or privileged by
22 existing law, is deemed public, and shall be made available to the public by the board pursuant to
23 Section 803.1."

24 CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct - Dangerous Use of Drugs or Alcohol)

26 11. Respondent's license is subject to disciplinary action for unprofessional conduct
27 under Code sections 2234.5(a) and 2239, in that Respondent has twice been convicted of alcohol
28

1 related offenses, the record of the conviction constituting conclusive evidence of unprofessional
2 conduct. The circumstances are as follows:

3 (May 10, 2013 Wet Reckless Conviction)

4 12. On May 12, 2012, a California Highway Patrol Officer observed Respondent's
5 vehicle driving erratically. The officer performed a traffic stop. Upon approaching Respondent's
6 vehicle, the officer noted Respondent's speech was slow, his eyes were twitching, and his mouth
7 was extremely dry and white. Respondent initially indicated that he had taken 200 mg of
8 Seroquel the previous evening at approximately 8:00 p.m. Later, Respondent admitted that he
9 had taken 45 mg of Lithium with the Seroquel the previous evening and consumed another 50 mg
10 of Seroquel that morning. The officer then conducted standard field sobriety tests, during which
11 Respondent appeared unbalanced and ultimately failed. Based on respondents erratic driving,
12 objective signs of drug impairment (i.e. slow speech, shaky/unsteady balance, dry mouth,
13 twitching eyes, dilated pupils), and admitted prescription drug use, the officers placed Respondent
14 under arrest for violating Vehicle Code ("VC") section 23152(a) [driving under the influence], a
15 misdemeanor. Respondent provided a urine sample, which tested positive for benzodiazepines.

16 13. On November 30, 2012, in a case entitled *The People of the State of California v.*
17 *Kirk Robert Allen*, case number 47541QB, filed in Monterey County Superior Court, Respondent
18 was charged with violating VC section 23152(a).

19 14. On May 10, 2013, Respondent was convicted by plea of no contest of violating VC
20 section 23103/23103.5 [alcohol related reckless driving], a misdemeanor, and the remaining
21 charges were dismissed. Respondent was sentenced as follows: three years probation, two days
22 jail time, twelve hour wet reckless program, and \$1,254.00 in fines and fees.

23 (December 13, 2013 DUI Conviction)

24 15. On August 17, 2013, a Monterey County Police Officer observed Respondent driving
25 on a highway with two missing tires. The officer observed that Respondent displayed objective
26 signs of intoxication and his shirt was both inside out and backwards. The officer asked
27 Respondent whether he had been drinking, which he denied. The officer requested that
28 Respondent perform standard field sobriety tests, which Respondent declined. Respondent was

1 then placed under arrest for violating VC sections 23152(a) [driving under the influence] and
2 23152(b) [driving under the influence with a blood alcohol concentration ("BAC") of 0.08% or
3 greater], both misdemeanors. Respondent provided a blood sample, which measured 0.17%
4 BAC.

5 16. On November 5, 2013, in a case entitled, *The People of the State of California v. Kirk*
6 *Robert Allen*, case number M531679A, filed in Monterey County Superior Court, Respondent
7 was charged with violating VC 23152(a) and VC 23152(b), both misdemeanors, with
8 enhancement to both counts for violating VC 23578 [driving under the influence with a BAC of
9 0.15% or greater] and VC 23540 [prior DUI within 10 years].

10 17. On December 13, 2013, Respondent was convicted by plea of no contest for violating
11 VC 23152(b) with enhancement to VC 23578, a misdemeanor. The remaining charges were
12 dismissed. Respondent was sentenced as follows: five years probation, seven days jail time, three
13 months first offender alcohol program, and \$2,158.00 in fines and restitution.

14 PRIOR DISCIPLINE

15 18. To determine the degree of discipline, if any, to be imposed on Respondent,
16 Complainant alleges that on or about November 24, 2008, the Board of Podiatric Medicine,
17 Department of Consumer Affairs, issued a Decision and Order, placing Kirk Robert Allen, DPM,
18 on probation for five years, for violating Code section 2237 [conviction for violating a drug
19 statute], in that on October 17, 1996, he pled guilty to a violation of Health and Safety Code
20 section 11350(a) [possession of a controlled substance], a felony, for possession of crack cocaine.
21 That decision is now final and is incorporated by reference as if fully set forth.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Podiatric Medicine issue a decision:

25 1. Revoking or suspending Doctor of Podiatric Medicine License Number E1923, issued
26 to Kirk Robert Allen, DPM.;

27 2. Ordering Kirk Robert Allen, DPM to pay the Board of Podiatric Medicine the
28 reasonable costs of the investigation and enforcement of this case, pursuant to Business and

1 Professions Code section 2497.5 and if placed on probation, the cost of probation monitoring,
2 pursuant to Business and Professions Code section 2227; and

3 3. Taking such other and further action as deemed necessary and proper.

4
5
6 DATED: September 19, 2014



JASON S. CAMPBELL, J.D.
Executive Officer
Board of Podiatric Medicine
Department of Consumer Affairs
State of California
Complainant

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